

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2490 OF 2007

Kesar Enterprises Ltd.)
a Company incorporated under)
the Companies Act, 1913 and)
having its registered office at)
Oriental House, 7, Jamshedji)
Tata Road, Churchgate,)
Mumbai-400 020.)..PETITIONER

Versus

1.K.C.Sarangi, Commissioner)
of Income Tax-1, having his)
office at Room No.330,)
Aayakar Bhavan, M.K. Road,)
Mumbai-400 020.)
2.R.N. Iyer, Income-tax Officer))
1(2)(2), having his office)
at Room No.527, Aayakar)
Bhavan, M.K. Road, Mumbai-20)
3.Balwant Singh,Dy.Commissioner))
of Income-tax Central Circle)
19, having his office at)
Room No.319, ARA Centre,)
Jhandewalan Extension,)
New Delhi-110 001.)
4.Union of India, Aayakar)
Bhavan, M.K. Road, Mumbai-20)..RESPONDENTS

Mr. T.P. Trivedi, Senior Counsel with Mr. P.R. Toprani for
the Petitioner.

Mr. A.S. Rao with Mr. P.S. Sahadevan, for Respondents.

**CORAM : F.I. REBELLO &
R.S. MOHITE, JJ.
DATED : 18TH DECEMBER 2007**

JUDGMENT (PER F.I. REBELLO, J.):

. The petitioner received a letter dated 8th November,
2006 from the Respondent No.1 that his assessment has to be
centralised with the Respondent No.3. The petitioner was
informed that under the provisions of Section 127(1) of the
Income Tax Act an opportunity was being given to give their
say as to whether they have any objection to the proposed

transfer. The petitioner replied to the same. Accordingly an order was made for transfer of the case. An application was made styling it as a Review of the order dated 14th March, 2007. A petition came to be filed before this Court being Writ Petition Lodging No.1008 of 2007. By order dated 30th April, 2007 the order of 14th March, 2007 was set aside. However, liberty was given to the Respondents to issue proper show cause notice giving reasons as to why assessee's case should be transferred from Mumbai to New

Delhi by following due process, etc., set out thereunder.

2. On 31st July, 2007 notice came to be issued to the petitioner that the Commissioner of Income Tax -I, Mumbai, proposes to transfer their case to New Delhi for the reasons set out therein. One of the reasons set out was that search action was taken on Radico Khaintan Group. A survey was also conducted on UPDA of which the petitioner was a member. During the search it was found that UPDA acted as a Nodal Agency to make illegal payments to various public servants and politicians on behalf of the distilleries situated in U.P. and that all the distilleries adopted different methods for generation of these illegal payment amounts and as such it was felt that all the U.P. based distilleries who are Members of UPDA be centralised with one Assessing Officer in the interest of revenue to carry out pointed and coordinated investigation leading to a logical and meaningful assessment. Various other reasons were cited including that from the seized documents it was seen that the petitioners had one unit which had made illegal payments. The petitioners replied to the same. The documents seized were

also made available. A personal hearing was granted. An order thereafter came to be passed on 4th October, 2007 under Section 127(2) of the Income Tax Act, 1961 transferring the case from Commissioner of Income Tax-1, Mumbai to the Assessing Officer set out thereunder. It was set out that the order would take effect from 4th October, 2007. This petition came to be filed on 27th November, 2007.

3. At the hearing of the petition it was the contention

of the petitioners that the transferring of the petitioner's case from respondent No.2 to Respondent No.3 with effect from 4th October, 2007 is unjustified. The respondents filed their reply of one R.N. Iyer. It is pointed out that the petitioner has a distillery at Baheri U.P.. That search and seizure actions were conducted under Section 132 of the IT Act at the residence of Shri Miglani, Secretary General of U.P. Distillery Association (UPDA) which resulted in recovery of certain incriminating documents and revealed that payments were made to various distilleries to various public servants for which UPDA has acted as a Nodal agency and the inadmissible expenditure worked out to Rs.246 crores. Various other reasons have been given including the petitioner having business activities in U.P. In answer the petitioner has filed a rejoinder pointing out that petitioner company is having various divisions in various places and that the trial balances and accounts of the said divisions are consolidated at Mumbai H.O.

4. The question is whether this should be a fit case for

this Court to exercise its extra ordinary jurisdiction. In the instant case subsequent to the order of this Court apart from the notices full opportunity was given to the petitioners. The petitioners participated and were also heard. After hearing by detailed order the proceedings have been transferred setting out the reasons as to why the case had to be transferred.

5. There is neither any violation of principles of natural justice or fair play nor any procedural irregularity. There is material with the respondents to prima facie show inadmissible expenditure by various distilleries in U.P. to various public servants. The petitioners distillery prima facie is also shown as a unit which has made payments between the years 2002-03 to 2005-06 till January. The mere fact that the petitioners subsequently have resigned from membership of UPDA, therefore, by itself is no answer. The question is whether there was material in possession of the respondents based on which the proceedings could have been initiated for transfer. In our opinion there was sufficient material and after complying with the procedural requirements a speaking order has been made. The argument that the order is merely to give effect to a pre-planned decision cannot be sustained as subsequent to the order of this Court the petitioners were given an opportunity to meet the case based on which the respondents proposed to transfer the case.

6. In our opinion on the facts and circumstances this would not be a fit case where this Court should invoke its

extra ordinary jurisdiction. Petition accordingly rejected.

Rule discharged. There shall be no order as to costs.

(R.S.MOHITE, J.)

(F.I.REBELLO, J)